IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 2 of 2005
with
LETTERS PATENT APPEAL No 3 of 2005
with
CIVIL APPLIACTION No 2 of 2005
with
CIVIL APPLICATION No 3 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

IVEE INJECTAA LTD & ANOTHER

Versus

JUNAGADH VIBHAGIYA NAGRIK SAHAKARI BANK LTD

Appearance:

1. LETTERS PATENT APPEAL Nos. 2 & 3 of 2005
MR HJ NANAVATI for Appellants
MR RD DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 11/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

These appeals are directed against the common judgment dated 3.11.2004 of the learned Single Judge dismissing the petitions filed under Article 226 of the Constitution challenging the notices issued by the respondent-bank under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Securitisation Act").

2. The respondent-bank issued notices dated 10.3.2003 to the two appellants herein-sister companies-under Section 13 (2) of the Securitisation Act for recovery of Rs.16,55,886/= (in LPA No.2 of 2005) and for recovery of Rs.94,88,693/= (in LPA No.3 of 2005). In the first case, the bank had filed Lavad Suit No.202 of 1992 and in the second case, the bank had filed Lavad Suit Nos.203 and 204 of 1992. In all the cases, the appellants herein (the defendants in the suits) submitted consent pursis dated 5.11.1992 on the basis of which the Board of Nominees passed decrees dated 26.11.1992 in all the three suits.

The petitioners made some payments but did not pay all the amounts as per the consent decrees and, therefore, the respondent-bank filed execution application Nos.37, 38 and 39 of 1998. After giving credit for the amounts deposited upto the year 2002, the respondent-bank issued the impugned notices dated 10.3.2003 under Section 13 (2) of the Securitisation Act. The appellants submitted their reply dated 16.9.2003 and reply dated 13.8.2003 which came to be rejected by the respondent-bank and communicated to the appellants by bank's letters dated 8.10.2003 and 3.9.2003 respectively. Hence, the appellants filed the petitions before the learned Single Judge.

3. The only contention raised before the learned Single Judge was that the impugned notices under Section 13 (2) of the Securitisation Act were issued beyond the period of limitation and, therefore, null and void ab initio. After hearing the learned counsel for the parties, the learned Single Judge held that the consent decrees were passed by the Board of Nominees on 26.11.1992 in all the three suits and the impugned notices came to be issued on 10.3.2003, hence they were issued within the period of 12 years as prescribed by Article 62 of the Limitation Act, 1963 read with Section

12 thereof. The original petitioners are, therefore, in appeal before us.

4. Mr.H.J.Nanavati, learned counsel for the appellants, submitted that the mortgage deeds were executed by the appellants in favour of the respondent-bank on 5/9.6.1987 and the period of 12 years as prescribed under Article 62 of the Limitation Act would begin to run from the said date, i.e. from 5/9.6.1987. It is submitted that the period of 12 years expired in the year 1999 and since the impugned notices have been issued thereafter in March 2003, they are barred by the provisions of Section 36 of the Securitisation Act.

5. Section 36 of the Securitisation Act reads as under:-

"36. No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of Section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963."

Articles 62, 63 and 136 of the Limitation Act read as under:

Description of suit	Period of limitation	Time from which period begins to run.
62. To enforce payment of money secured by a mortgage or otherwise charged upon immoveable property.	Twelve years	When the money sued for becomes due.
63. By a mortgagee- (a) for foreclosure.	Thirty years	When the money secured by the mortgagee becomes due
(b) for possession of immoveable property	Twelve years	When the mortgagee becomes entitled to possession.

	mortgaged.		
136.	For the execution of any decree(other than a decree granting a mandatory injunction) or order of any Civil Court.	Twelve years	When the decree or order becomes enforeable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

6. Now, the period of limitation would begin to run from the time when the money sued becomes due. According to the learned counsel for the appellants, under the mortgage deeds executed by the appellants, moneys were required to be paid within a period of three years and, therefore, the period of limitation would, at the most, run from 5/9.6.1990 and still the impugned notices were issued after the period of 12 years from 5/9.6.1990.

7. The submission overlooks the fact that the suits in which consent decrees were passed by the trial Court were filed in the year 1992, i.e. well within the period of 12 years from the date on which the appellants' liability to pay the mortgaged money arose. Once suits were filed within the period of limitation and once the Board of Nominees passed decrees on 26.11.1992, there was no question of the respondent-bank's claim becoming time-barred on the basis that the due date for payment was 5/9.6.1990. Admittedly, the impugned notices under Section 13 (2) of the Securitisation Act were issued on 10.3.2003, i.e. well within the period of 12 years from the date of passing of the consent decrees on 26.11.1992, even assuming that under the consent decrees, the moneys became due on the same date. The bank was, therefore,

entitled to execute the decrees within the period of limitation prescribed for execution of the decrees, which is 12 years from the date of the default in payment of the amounts under the decrees (Art.136 of the Limitation Act, 1963).

8. The submission of the learned counsel for the appellant also overlooks the scheme of the Securitisation Act which is different from the proceedings under the Code of Civil Procedure. While the Civil Procedure Code provides for two separate and distinct stages- (i) adjudication by the Court of the mortgagee's claims resulting into a decree and (ii) the subsequent stage of execution of the decree with judicial intervention; the Securitisation Act confers power on the mortgagees, which are financial institutions, to enforce security without the intervention of any Court or Tribunal and notwithstanding anything contained in Sections 69 and 69A of the Transfer of Property Act, 1882. Of course, the measures for enforcement of security are to be taken after giving the borrower a notice in writing to discharge in full his liabilities of the secured creditors within 60 days from the date of notice and if the borrower gives a reply raising any dispute about the amount due including dispute about interest, the financial institution will have to meaningfully consider the reply and take the decision and thereafter proceed under sub-section (4) of Section 13. Section 17 of the Securitisation Act confers a right of appeal before the Debts Recovery Tribunal to any person (including the borrower) aggrieved by any of the measures taken by the secured creditor under Section 13(4) of the Act. Hence, when the secured creditor has already obtained a decree of a Civil Court/Debts Recovery Tribunal, issuance of notice under Section 13 (2) of the Securitisation Act is not to be construed as institution of a suit in a Civil Court for enforcement of the mortgage, but the proceeding would be in the nature of execution of the decree.

9. At this stage it is also necessary to notice that Section 36 of the Securitisation Act provides that claim in respect of the "Financial asset" is to be made within the period of limitation prescribed under the Limitation Act. "Financial asset" as defined by Section 2 (l) of the Securitisation Act means debt or receivables and includes a claim to any debt or receivables or part thereof, whether secured or unsecured, and also any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent. Section 2 (t) defines "property" to mean

immovable property, movable property, any debt or any right to receive payment of money, whether secured or unsecured and receivables, whether existing or future. It is, therefore, clear that the decrees passed by the Board of Nominees on 26.11.1992 in favour of the respondent-bank and against the appellants herein are covered by the definitions of "property" and "financial asset" referred to in Section 13 (2) of the Securitisation Act. Article 136 of the Limitation Act prescribes the limitation period of twelve years from the date when the decree becomes enforceable or the date of default in making the payment under the decree.

10. In view of the above discussion, we are of the view that the impugned notices dated 10.3.2003 were issued within the period of limitation as contemplated by Section 36 of the Securitisation Act read with Article 136 of the Limitation Act. Both the appeals are accordingly dismissed.

11. Since the appeals are dismissed, the Civil Applications do not survive. They are accordingly rejected.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)